

Jul 30, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOSE M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 4:17-CV-05122-RHW

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 12, 13. Plaintiff brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's final decision, which denied Plaintiff's application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C §§ 1381-1383F. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

## I. Jurisdiction

2 An application for Supplemental Security Income was filed on behalf of  
3 Plaintiff, a minor, on April 6, 2011, AR 159-68, alleging onset of disability on  
4 February 14, 1999, AR 179. His application was initially denied on September  
5 16, 2011, AR 115-17, and on reconsideration on May 16, 2012, AR 121-23. On  
6 January 10, 2014, Administrative Law Judge (“ALJ”) Caroline Siderius held a  
7 hearing in Spokane, Washington. AR 79-92. On February 7, 2014, the ALJ issued  
8 a decision finding Plaintiff ineligible for benefits. AR 59-75. The Appeals Council  
9 denied Plaintiff’s request for review on February 2, 2017, AR 17-21, making the  
10 ALJ’s ruling the “final decision” of the Commissioner. Plaintiff timely filed the  
11 present action challenging the denial of benefits, and his claims are properly before  
12 this Court pursuant to 42 U.S.C. § 405(g).

## II. Sequential Evaluation Process

14 The Social Security Administration has established a three-step sequential  
15 evaluation process to determine whether a child (an individual under the age of 18)  
16 qualifies for disability benefits. 20 C.F.R. § 416.924(a).

17 Step one inquires whether the claimant is presently engaged in “substantial  
18 gainful activity.” 20 C.F.R. § 416.972(a). Substantial gainful activity is defined as  
19 significant physical or mental activities done or usually done for profit. 20 C.F.R. §

1 416.972. If the claimant is engaged in substantial activity, he or she is not entitled  
2 to disability benefits. 20 C.F.R. § 416.924(b). If not, the ALJ proceeds to step two.

3 Step two asks whether the claimant has a medically determinable  
4 impairment that is severe, or combination of impairments that is severe. 20 C.F.R.  
5 § 416.924(a). A severe impairment is one that has lasted or is expected to last for at  
6 least twelve months, and must be proven by objective medical evidence. 20 C.F.R.  
7 §§ 404.1508-09 & 416.908-09. For an individual who has not attained age 18, a  
8 medically determinable impairment or combinations of impairments is not severe  
9 if it is a slight abnormality or a combination of slight abnormalities that causes no  
10 more than minimal functional limitations. 20 C.F.R. § 416.924(c). If the claimant  
11 does not have a severe impairment, or combination of impairments, the disability  
12 claim is denied, and no further evaluation is required. Otherwise, the evaluation  
13 proceeds to the third step.

14 Step three involves a determination of whether the claimant has an  
15 impairment or combination of impairments that “meets, medically equals, or  
16 functionally equals” one of the listed impairments acknowledged by the  
17 Commissioner to be sufficiently severe. 20 C.F.R. § 416.924(a). In making this  
18 determination, the ALJ must consider the combined effect of all medically  
19 determinable impairments, even those that are not severe. 20 C.F.R. §§ 416.923;  
20 416.924a(b)(4); 416.926a(a),(c). If the impairment or combination of impairments

1 meets or equals, or functionally equals one of the listed impairments, and it has  
2 lasted or is expected to last for a continuous period of at least 12 months, the  
3 claimant is presumed disabled and qualifies for benefits. 20 C.F.R. § 416.924(d). If  
4 not, the claimant is not disabled and does not qualify for benefits. *Id.*

5 In determining whether a claimant's combination of impairments  
6 functionally equals the listings requires an assessment of the claimant's limitations  
7 in six broad areas of functioning called domains. 20 C.F.R. § 416.926a(b)(1). The  
8 six domains for children are: (1) "Acquiring and Using Information," (2)  
9 "Attending and Completing Tasks," (3) "Interacting and Relating with Others," (4)  
10 "Moving About and Manipulating Objects," (5) "Caring for Yourself," and (6)  
11 "Health and Physical Well-being." 20 C.F.R. § 416.926a(b)(1)(i-vi). In making this  
12 assessment, the ALJ must compare how appropriately, effectively, and  
13 independently the claimant performs activities compared to the performance of  
14 other children of the same age who do not have impairments. 20 C.F.R. §  
15 416.926a(b). The claimant's combination of impairments will be found to  
16 functionally equal the listings if the claimant has "marked" limitations in at least  
17 two of the domains or if the claimant has "extreme" limitations in any one of the  
18 six domains. 20 C.F.R. § 416.926a(d).

19 The claimant will be found to have "marked" limitations when his  
20 combination of impairments seriously interferes with the claimant's ability to

1 independently initiate, sustain, or complete activities. 20 C.F.R. § 416.926a(e)(2).

2 The claimant’s “day-to-day functioning may be seriously limited when [the

3 claimant’s] impairment(s) limit only one activity or when the interactive and

4 cumulative effects of [the claimant’s] impairment(s) limit several activities.” *Id.* A

5 “marked” limitation implies a limitation that is “more than moderate” but “less

6 than extreme.” *Id.*

7 The claimant will be found to have an “extreme” limitation when his

8 combination of impairments very seriously interferes with his ability to

9 independently initiate, sustain, or complete activities. 20 C.F.R. § 416.926a(e)(3).

10 The claimant’s “day-to-day functioning may be very seriously limited when [the

11 claimant’s] impairment(s) limit only one activity or when the interactive and

12 cumulative effects of [the claimant’s] impairment(s) limit several activities.” *Id.*

13 An “extreme” limitation means a limitation that is “more than marked.” An

14 “extreme” limitation is given to the worst limitations. *Id.* “However, ‘extreme

15 limitation’ does not necessarily mean a total lack or loss of ability to function.” *Id.*

### 16 **III. Standard of Review**

17 A district court’s review of a final decision of the Commissioner is governed

18 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the

19 Commissioner’s decision will be disturbed “only if it is not supported by

20 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,

1 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than  
2 a mere scintilla but less than a preponderance; it is such relevant evidence as a  
3 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*  
4 *Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (quoting *Andrews v. Shalala*, 53 F.3d  
5 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining  
6 whether the Commissioner’s findings are supported by substantial evidence, “a  
7 reviewing court must consider the entire record as a whole and may not affirm  
8 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*  
9 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879  
10 F.2d 498, 501 (9th Cir. 1989)).

11 In reviewing a denial of benefits, a district court may not substitute its  
12 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
13 1992). If the evidence in the record “is susceptible to more than one rational  
14 interpretation, [the court] must uphold the ALJ’s findings if they are supported by  
15 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,  
16 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9<sup>th</sup> Cir.  
17 2002) (if the “evidence is susceptible to more than one rational interpretation, one  
18 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,  
19 a district court “may not reverse an ALJ’s decision on account of an error that is  
20 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is

1 inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115.  
2 The burden of showing that an error is harmful generally falls upon the party  
3 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

4 **IV. Statement of Facts**

5 The facts of the case are set forth in detail in the transcript of proceedings,  
6 and accordingly, are only briefly summarized here. Plaintiff was 12 years old on  
7 the date of his application, and he was just shy of his sixteenth birthday at the time  
8 of the ALJ's decision. AR 59-75, 154. Plaintiff primarily resided with his  
9 grandmother throughout his life, although he did briefly live with his aunt and  
10 uncle. AR 81, 246.

11 **V. The ALJ's Findings**

12 The ALJ determined that Plaintiff was not disabled under the Social Security  
13 Act and denied his application for benefits. AR 59-75.

14 **At step one**, the ALJ found that Plaintiff had not engaged in substantial  
15 gainful activity since the date of application, April 6, 2011 (citing 20 C.F.R. §§  
16 416.924(b) and 416.971 *et seq.*). AR 62.

17 **At step two**, the ALJ found Plaintiff had the following severe impairments:  
18 mood disorder, anxiety disorder, disruptive disorder, and attention deficit  
19 hyperactivity disorder (citing 20 C.F.R. § 416.924(c)). *Id.*

1 At step three, the ALJ found that Plaintiff did not have an impairment or  
2 combination of impairments that meets or medically equals the severity of one of  
3 the listed impairments in 20 C.F.R. §§ 404, Subpt. P, App. 1 (citing 20 C.F.R. §§  
4 416.924, 416.925, and 416.926). AR 62-63. Additionally, the ALJ found that  
5 Plaintiff does not have an impairment or combination of impairments that  
6 functionally equals the severity of the listings (citing 20 C.F.R. §§ 416.924(d) and  
7 416.926(a)). AR 63-74.

## VI. Issues for Review

9 Plaintiff argues that the Commissioner’s decision is not free of legal error  
10 and not supported by substantial evidence. Specifically, Plaintiff argues the ALJ  
11 erred by: (1) failing to fully and fairly develop the record by failing to order a  
12 comprehensive intellectual assessment; (2) rejecting the medical opinions of  
13 consultative examiner Dr. CeCilia Cooper, PhD, and State agency psychological  
14 consultant Dr. Richard Borton, PhD; and (3) finding that Plaintiff’s impairments do  
15 not functionally meet the childhood listings. ECF No. 12 at 2.

## VII. Discussion

**A. The ALJ did not err by failing to order a comprehensive intellectual assessment.**

19 Dr. CeCilia Cooper, PhD, performed a psychological consultation on  
20 Plaintiff on March 7, 2012. AR 328-35. In her prognosis, she stated, “[a]n

1 intellectual assessment is recommended if one has not been completed beyond  
2 what is reflected in the referral records.” AR 334. Plaintiff argues that the ALJ  
3 erred by failing to order an intellectual assessment based on this reference. ECF  
4 No. 12 at 5. The ALJ gave Dr. Cooper’s report only partial weight. AR 66-67.

5 The ALJ has a duty to “fully and fairly develop the record and to assure that  
6 the claimant’s interests are considered.” *Brown v. Heckler*, 713 F.2d 441, 443 (9th  
7 Cir. 1983). This does not mean that the ALJ must follow every avenue presented.  
8 The duty is triggered “only when there is ambiguous evidence or when the record  
9 is inadequate for proper evaluation of the evidence.” *Mayes v. Massanari*, 276 F.3d  
10 453, 459-60 (9th Cir. 2001). The ALJ is only required to seek additional evidence  
11 when the existing evidence consistently favors the claimant. *Lewis v. Apfel*, 236  
12 F.3d 503, 514-15 (9th Cir. 2001).

13 Here, the ALJ gave significant weight to the findings of Dr. Brent O’Neal,  
14 PhD, with regard to intellectual functioning. AR 66. Dr. Cooper opined more  
15 significant intellectual impairments than Dr. O’Neal, and the ALJ gave less weight  
16 to Dr. Cooper’s opinion. AR 66-67. As detailed in the next section, the ALJ  
17 provided legally sufficient reasons to explain the weight given to Dr. Cooper’s  
18 opinion. *See infra* at pp. 11-13. As the ALJ found Dr. O’Neal’s opinion more  
19 reliable, she was not required to accept all of the recommendations from Dr.  
20 Cooper. The Court finds no error in the failure to order an intellectual assessment.

1       **B. The ALJ did not err in the treatment of the medical opinions in the**  
2       **record.**

3           The Ninth Circuit has distinguished between three classes of medical  
4 providers in defining the weight to be given to their opinions: (1) treating  
5 providers, those who actually treat the claimant; (2) examining providers, those  
6 who examine but do not treat the claimant; and (3) non-examining providers, those  
7 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th  
8 Cir. 1996) (as amended).

9           A treating provider's opinion is given the most weight, followed by an  
10 examining provider, and finally a non-examining provider. *Id.* at 830-31.  
11 Furthermore, generally more weight is given to the opinion of a specialist about  
12 medical issues related to his or her area of specialty. 20 CFR § 416.927(c)(2)(5). In  
13 the absence of a contrary opinion, a treating or examining provider's opinion may  
14 not be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a  
15 treating or examining provider's opinion is contradicted, it may only be discounted  
16 for "specific and legitimate reasons that are supported by substantial evidence in  
17 the record." *Id.* at 830-31.

18           The ALJ may meet the specific and legitimate standard by "setting out a  
19 detailed and thorough summary of the facts and conflicting clinical evidence,  
20 stating [his or her] interpretation thereof, and making findings." *Magallanes v.*

1 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When  
2 rejecting a treating provider's opinion on a psychological impairment, the ALJ  
3 must offer more than his or her own conclusions and explain why he or she, as  
4 opposed to the provider, is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th  
5 Cir. 1988).

6       **a. Dr. CeCilia Cooper, PhD**

7       As stated previously, Dr. Cooper performed a psychological consultation on  
8 Plaintiff on March 7, 2012. AR 328-35. She suggested the possibility of a learning  
9 disorder based on his mental status examination, but she did not specifically  
10 diagnose Plaintiff with a learning disorder. AR 334. The ALJ gave only some  
11 weight to this opinion because Plaintiff has no history of special education, and  
12 because it was inconsistent with the findings of Dr. O'Neal, to whom she gave  
13 significant weight. AR 66-67. Additionally, the ALJ reasoned that the issues with  
14 Plaintiff's short-term memory and concentration during the mental status  
15 examination could be explained by his attention deficit hyperactivity disorder  
16 ("ADHD"). AR 67.

17       Dr. O'Neal obtained an estimate of Plaintiff's intellectual functioning with  
18 the Wechsler Abbreviate Scale of Intelligence ("WASI"), which measured Plaintiff  
19 to have intellectual functioning in the borderline range with a "significant  
20 discrepancy" between his verbal and nonverbal capabilities. AR 279. Plaintiff's

1 verbal subtest fell just below the average range. *Id.* Dr. O’Neal did not diagnose  
2 borderline intellectual functioning in his report. AR 281. In his examination, Dr.  
3 O’Neal found Plaintiff to be “pleasant and happy” with “adequate attention,  
4 memory, verbal communication, and reasoning skills.” AR 281.

5 Plaintiff argues that the ALJ misinterpreted Dr. O’Neal’s report and the  
6 purpose of the WASI evaluation. ECF No. 12 at 10-11. However, the ALJ  
7 provided a reasonable interpretation of the record, and Plaintiff cannot prevail  
8 merely by claiming that the ALJ should have taken a different interpretation. The  
9 ALJ is the trier of fact, and “[t]he trier of fact and not the reviewing court must  
10 resolve conflicts in the evidence, and if the evidence can support either outcome,  
11 the court may not substitute its judgment for that of the ALJ.” *Matney v. Sullivan*,  
12 981 F.2d 1016, 1019 (9th Cir. 1992). It is “the ALJ [who] is the final arbiter with  
13 respect to resolving ambiguities in the medical evidence.” *Tommasetti v. Astrue*,  
14 533 F.3d 1035, 1041 (9th Cir. 2008).

15 Plaintiff also argues that the record is ambiguous as to whether Plaintiff  
16 received special education classes, the lack of which was another justification the  
17 ALJ gave for giving less weight to Dr. Cooper’s opinion regarding intellectual  
18 function. ECF No. 12 at 11. The ALJ concluded that the absence of evidence  
19 indicated Plaintiff did not receive these classes. AR 66. The inconsistent statements  
20 in the record from Plaintiff and his family cited by Plaintiff do not make this

1 finding unreasonable. When the ALJ presents a reasonable interpretation that is  
2 supported by the evidence, it is not the role of the courts to second-guess it.  
3 *Rollins*, 261 F.3d 853, 857 (9th Cir. 2001). The Court “must uphold the ALJ’s  
4 findings if they are supported by inferences reasonably drawn from the record.”  
5 *Molina*, 674 F.3d at 1111; *see also Thomas*, 278 F.3d 947, 954 (if the “evidence is  
6 susceptible to more than one rational interpretation, one of which supports the  
7 ALJ’s decision, the conclusion must be upheld”).

8 Finally, the ALJ noted that the problems with concentration and short-term  
9 memory opined by Dr. Cooper could be explained by Plaintiff’s ADHD. AR 67.  
10 Plaintiff argues that this is a medical judgment that the ALJ does not have the  
11 expertise to make. ECF No. 12 at 13. The ALJ, however, is not diagnosing Plaintiff  
12 with ADHD—that diagnosis is already throughout the record and accepted as a  
13 medically determinable severe impairment at step two. *See* AR 62. Dr. O’Neal, as  
14 well as Plaintiff’s pediatrician, diagnosed Plaintiff with ADHD. AR 222-29, 281.  
15 Even Dr. Cooper acknowledges this diagnosis in her report. AR 328. The ALJ  
16 noted that the symptoms of impaired concentration and memory are consistent with  
17 this well-documented condition. AR 67.

18 In sum, the ALJ provided multiple legally sufficient reasons for the weight  
19 given to Dr. Cooper’s opinion, and the Court finds no error.

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**b. Dr. Richard Borton, PhD**

Dr. Borton performed a Disability Determination on behalf of the State on May 15, 2012. AR 103-14. Dr. Borton opined marked limitations in Plaintiff's ability to interact and relate with others. AR 111. The ALJ found this to be inconsistent with Plaintiff's "improved level of social functioning since the application date." AR 66. The ALJ detailed how there had been no calls from the school, Plaintiff had not been skipping school to avoid his peers, and there was no evidence he had been on a Behavior Intervention Plan at school. *Id.* In sum, the ALJ found the record to be consistent in that Plaintiff's ability to interact and relate with others is less than marked, and little weight was given to Dr. Borton's opinion for these reasons. *Id.*

Plaintiff counters the ALJ's findings with evidence in the record that he believes supports Dr. Borton's opinion, including a teacher questionnaire prepared by Plaintiff's seventh grade teacher, Travis Hatke. ECF No. 12 at 15. Mr. Hatke opined that Plaintiff had "serious problems" asking for permission and following rules and "very serious problems" respecting and obeying adult authority. AR 417. Plaintiff also notes outbursts of anger and difficulty getting along with family. ECF No. 12 at 15.

The record, however, supports the ALJ's weight for Dr. Borton's opinion. While Mr. Hatke did provide the findings referenced by Plaintiff, Mr. Hatke also

1 stated that Plaintiff's prior attendance issues were no longer a problem and that it  
2 had not been necessary to implement a behavior modification strategy for Plaintiff.  
3 AR 414, 417. The severe outbursts referenced by Plaintiff were mentioned in an  
4 October 2011 re-intake visit with Catholic Family & Child Services, which  
5 occurred prior to the May 2012 findings by Dr. Borton. AR 340. The ALJ broadly  
6 found a pattern of improvement since the application date, AR 66, which is not  
7 contradicted by isolated incidents, particularly when the later evidence, such as Mr.  
8 Hatke's statement, support the conclusion.

9 As with Dr. Cooper, when the ALJ presents a reasonable interpretation that  
10 is supported by the evidence, it is not the role of the courts to second-guess it.  
11 *Rollins*, 261 F.3d at 857.

12 **C. The ALJ did not err in finding that Plaintiff's impairments do not  
13 functionally meet the childhood listings.**

14 Plaintiff argues that the ALJ's finding that his impairments do not  
15 functionally meet the childhood listings are not supported by substantial evidence.  
16 ECF No. 12 at 16-21. He takes issue with the findings related to "attending and  
17 completing tasks," "interacting and relating with others," and "acquiring and using  
18 information." *Id.*

19 //  
20 //

1                   **a. Attending and completing tasks**

2                   The ALJ found that Plaintiff had less than marked limitations in attending  
3 and completing tasks for multiple reasons. First, after his release from juvenile  
4 detention in 2011, his school attendance improved and he did better in school. AR  
5 70. This is supported by the record. As mentioned previously, his seventh grade  
6 teacher, Mr. Hatke, stated that Plaintiff's prior attendance issue had resolved. AR  
7 417. In March 2012, Plaintiff himself acknowledged doing well in school and  
8 having a good mood while in attendance. AR 347.

9                   The ALJ also found Plaintiff to have less than marked limitations in this area  
10 because the consultative examination by Dr. Cooper in March 2012 demonstrated  
11 that Plaintiff could maintain attention and concentration, but he was impaired in his  
12 ability to carry out instructions for tasks involving two or three unrelated steps. AR  
13 70. This finding is directly supported by Dr. Cooper's report. AR 334.

14                  Plaintiff next argues that Mr. Hatke's questionnaire evidences marked  
15 limitations because he checked that Plaintiff had a "serious problem" working  
16 without distracting self or others. AR 416. While this is true, Mr. Hatke also found  
17 that Plaintiff did *not* have serious problems in the other 12 activities. AR 416.

18                  Likewise, the record does not support that Plaintiff's transition to an  
19 alternative school demonstrates a marked limitation in attending and completing  
20 tasks. *See* ECF No. 12 at 18. Rather, the fact Plaintiff showed improvement in

1 attendance and behavior at the alternative school shows that environment, not  
2 impairment, was more significant to Plaintiff's struggles.

3 Plaintiff finally cites to the findings by Dr. Ivan Guevara, M.D., that Plaintiff  
4 suffered from frequent problems sustaining attention, being distracting, listening  
5 when spoken too, fidgeting, and excessive physical and verbal activity. AR 299-  
6 306. However, some of these findings were during a period in which Plaintiff was  
7 not taking any of his medications. AR 299. Additionally, the record, particularly  
8 Mr. Hatke's statement, shows that many of Plaintiff's behavioral issues improved  
9 throughout time. AR 414, 416.

10 **b. Interacting and relating with others**

11 Plaintiff again tries to argue that the ALJ erred by not accepting Dr. Borton's  
12 findings. ECF No. 12 at 19. As the Court has already addressed this issue, it will  
13 not revisit it.

14 Plaintiff also points to the assessment by Dr. O'Neal to support his  
15 argument. ECF No. 12 at 19-20. While Dr. O'Neal stated that Plaintiff's scores in  
16 Rule-Breaking Behavior, Aggressive Behavior, Oppositional Defiant Problems,  
17 and Conduct Problems were in the clinical range, AR 280, Dr. O'Neal also stated  
18 that Plaintiff's "behavioral problems may be more a function of the environment  
19 that he was residing in and external incentive for his acting out," AR 281. Dr.  
20 O'Neal based this on the lack of limits and follow through with discipline practices

1 in Plaintiffs' grandparents' home and the improvement during the period in which  
2 Plaintiff lived with his uncle. *Id.* This is supported by the record as a whole.  
3 Contrary to Plaintiff's allegation, Dr. O'Neal's report does not undermine the  
4 ALJ's findings.

5 **c. Acquiring and using information**

6 Last, Plaintiff argues that his improvement once enrolled in an alternative  
7 school demonstrates that he is markedly impaired in acquiring and using  
8 information. ECF No. 12 at 20. The record, however, demonstrates that a change in  
9 environment and structure, such as that offered by the alternative school, increased  
10 stability and promoted success—not that Plaintiff's impairments were too severe to  
11 prevent him from acquiring and using information. The record supports that  
12 Plaintiff improved in both attendance and academics in 2012, after he began  
13 attending the alternative school in January 2012.<sup>1</sup> AR 349.

14 In May 2012, Mr. Hatke stated Plaintiff had no more than slight problems in  
15 any of the activities listed under "acquiring and using information." AR 415.  
16 Likewise, in March 2012, Plaintiff himself acknowledged that he was doing well  
17 academically, getting As and Bs, and enjoyed being at school. AR 347.

18

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19 <sup>1</sup> Moreover, even before attending alternative school, the record shows that  
20 Plaintiff's performance improved with better structure and environment. For  
example, Plaintiff attended school more regularly and did better when he lived  
with his aunt and uncle than with his grandparents. AR 246.

In sum, the ALJ's reasoning for assessing less than marked impairments in acquiring and using information is consistent, and Plaintiff's attendance at an alternative school supports, not contradicts, this.

## VIII. Conclusion

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is supported by substantial evidence and free of legal error.

**Accordingly, IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.
2. Defendant's Motion for Summary Judgment, **ECF No. 13**, is

## GRANTED.

3. Judgment shall be entered for Defendant and against Plaintiff.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order, forward copies to counsel and **CLOSE** the file.

**DATED** this 30th day of July, 2018.

*s/Robert H. Whaley*  
ROBERT H. WHALEY  
Senior United States District Judge